

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #16	CCRB Case #: 201800605	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 01/12/2018 10:37 PM	Location of Incident: § 87(2)(b)	Precinct: 47	18 Mo. SOL 7/12/2019	EO SOL 7/12/2019	
Date/Time CV Reported Tue, 01/16/2018 2:35 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 01/23/2018 10:58 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Francine Delvalle	14094	955874	045 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Mcdonald	21164	963152	040 PCT
2. POM Rafael Rispoli	12456	956201	047 PCT
3. POM Adam Scott	21471	963267	040 PCT
4. SGT Jonathan Rivera	02049	949550	052 PCT
5. POM Driljan Rugovac	19389	959684	045 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Francine Delvalle	Discourtesy: Police Officer Francine Delvalle spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B.POF Francine Delvalle	Off. Language: Police Officer Francine Delvalle made remarks to § 87(2)(b) based upon the gender § 87(2)(b)	§ 87(2)(b)
C.POF Francine Delvalle	Discourtesy: Police Officer Francine Delvalle acted discourteously toward § 87(2)(b)	§ 87(2)(b)
D.POF Francine Delvalle	Force: Police Officer Francine Delvalle used physical force against § 87(2)(b)	§ 87(2)(b)
E.POF Francine Delvalle	Discourtesy: Police Officer Francine Delvalle spoke discourteously to § 87(2)(b)	§ 87(2)(b)

### Case Summary

On January 16, 2018, Sgt. Tamika Stapleton generated this complaint upon reviewing PO Michael McDonald and PO Adam Scott's BWC footage pertaining to § 87(2)(b) arrests on January 12, 2018.

On January 12, 2018, at approximately 10:37 p.m., § 87(2)(b) was placed in handcuffs inside of § 87(2)(b), in the Bronx. As PO Francine Delvalle conducted a field search of § 87(2)(b) she told § 87(2)(b) "Don't fucking kick me, bitch" and she used her hand to push § 87(2)(b) head back (**Allegation A: Discourtesy**, § 87(2)(g); **Allegation B: Offensive Language**, § 87(2)(g); **Allegation C: Discourtesy**, § 87(2)(g)). During the field search, § 87(2)(b) struck PO Delvalle and in response, PO Delvalle punched § 87(2)(b) (**Allegation D: Force**, § 87(2)(g)). As § 87(2)(b) was being escorted out of the building, she heard PO Delvalle say, "Fuck out of here" (**Allegation E: Discourtesy**, § 87(2)(g)).

§ 87(2)(b) was arrested and charged with § 87(2)(b) (Board Review 12 and 13).

The investigation obtained PO Michael McDonald, PO Rafael Rispoli, and PO Adam Scott's BWC footage (Board Review 05-07 and 23-25).

### Findings and Recommendations

**Allegation (A) Discourtesy: Police Officer Francine Delvalle spoke discourteously to § 87(2)(b)**

**Allegation (B) Discourtesy: Police Officer Francine Delvalle made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)**

**Allegation (C) Discourtesy: Police Officer Francine Delvalle acted discourteously toward § 87(2)(b)**

It is undisputed that PO Delvalle told § 87(2)(b) "Don't fucking kick me, bitch" and shoved § 87(2)(b) face in response to § 87(2)(b) kneeling her in the chest.



201800605\_20180808\_1930A\_DM.mp4

The Snagit clip of PO Scott's BWC footage captured PO Delvalle searching § 87(2)(b) while § 87(2)(b) hands were behind her back. As PO Delvalle searches § 87(2)(b) leg area (off-screen), PO Delvalle pushes her arm downward and stands up. The video clip depicts § 87(2)(b) telling PO Delvalle, "You don't have to manhandle me." Between 00:06-00:08 seconds, PO Delvalle tells § 87(2)(b) "Don't fucking kick me bitch," while holding her hand up to § 87(2)(b) chin, and then pushing § 87(2)(b) head back (Board Review 07, 08, and 24).

In her CCRB testimony, § 87(2)(b) stated that PO Delvalle patted her down as she was handcuffed outside the elevator and during the pat down, § 87(2)(b) raised her right knee because PO Delvalle had forcefully pulled her body hair (Board Review 01). § 87(2)(b) did not recall what PO Delvalle specifically said after she raised her knee, but she stated that PO Delvalle used profanities during the incident.

In their CCRB statements, PO Rispoli and PO Delvalle both stated that officers were in pursuit of § 87(2)(b) pertaining to a 911 call about a dispute involving a knife. Their memo books also documented the 911 job (Board Review 09 and 10). Upon arriving at 740 East Gun Hill Road, officers placed § 87(2)(b) in handcuffs. PO Rispoli and PO Delvalle both stated that § 87(2)(b) kned PO Delvalle as she conducted the field search. PO Rispoli did not recall PO Delvalle using profanities (Board Review 02). In her CCRB statement, PO Delvalle stated that she did not know if § 87(2)(b) was in handcuffs, but she saw that officers held her arms behind her back (Board Review 03). PO Delvalle stated that she told § 87(2)(b) “Don’t fucking kick me” to give her a verbal warning and she used profanity because she was in a state of shock after being kned by § 87(2)(b). PO Delvalle stated that she was not equipped with a plate to protect her chest at the time and she had never encountered such occurrence. PO Delvalle stated that she did not know why she said “bitch.” During her second CCRB interview, PO Delvalle denied doing anything physically when she gave the verbal warning (Board Review 03). After she reviewed PO Scott’s BWC footage, PO Delvalle stated that it was not her intention to make physical contact with § 87(2)(b).

In the EVENT summary, EVENT § 87(2)(b) involved a radio run regarding a dispute involving a knife at § 87(2)(b) (Board Review 16).

§ 87(2)(b) arrest report (§ 87(2)(b)) noted that § 87(2)(b) fled the scene of a crime and when officers apprehended her she used her knee to strike PO Delvalle in the chest and she head-butted PO Delvalle while PO Delvalle was conducting a field search (Board Review 12).

Patrol Guide Procedure 203-09 states that officers must be courteous and respectful in the interactions with the public (Board Review 18). The use of profanity during stressful encounters does not constitute misconduct, Disciplinary Case No. 2013-10143 (Board Review 20).

Patrol Guide Procedure 203-10, officers are prohibited from making disrespectful remarks regarding another person’s gender (Board Review 19).

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**Allegation (D) Force: Police Officer Francine Delvalle used physical force against § 87(2)(b)**

As mentioned above, it is undisputed that § 87(2)(b) kned PO Delvalle's chest. It is also undisputed that § 87(2)(b) struck PO Delvalle's head and PO Delvalle punched § 87(2)(b) in the face in response. It is unconfirmed whether or not § 87(2)(b) sustained any injuries.



201800605\_20180808\_1930B\_DM.mp4

The Snagit clip of PO Scott's BWC footage captured PO Delvalle beginning her search of § 87(2)(b) to the point she punched § 87(2)(b). At 00:22 seconds, PO Delvalle bends forwards towards § 87(2)(b) after telling § 87(2)(b) "Don't fucking kick me, bitch." At 00:23 seconds, § 87(2)(b) uses her head to strike PO Delvalle in the back of her head. At 00:24 seconds, PO Delvalle punches § 87(2)(b) in the face once (Board Review 07, 24, and 27). PO Rispoli and PO McDonald's BWC footage depicted the same incident from different angles (Board Review 05, 06, 24, and 25)

In their CCRB statement, PO Rispoli and PO Delvalle both stated that PO Delvalle immediately punched § 87(2)(b) after § 87(2)(b) head-butted her (Board Review 02 and 03). PO Delvalle stated that she punched § 87(2)(b) as self-defense and she denied punching § 87(2)(b) for any additional reasons. PO Delvalle stated that she did not aim her punch toward any specific body part because it was a reaction. PO Delvalle stated that aside from continuing her search there was nothing that prevented her from walking away after feeling the blow to her head. When asked if there was a reason why the search of § 87(2)(b) could not have been conducted after she was removed from the location, PO Delvalle stated that it was not her position to make this decision. PO Delvalle has been a member of the NYPD for four years, and in her experience of conducting searches of females in the past, she has not had a similar experience so she believed that she should have continued the search. PO Delvalle also stated that § 87(2)(b) was supposed to be searched before she was placed in a vehicle for transport. PO Delvalle denied using any additional de-escalation techniques besides giving her the verbal warning because the incident happened so quickly.

As noted above, § 87(2)(b) arrest report detailed the force she used against PO Delvalle (Board Review 12).

The Threat, Resistance, and Injury Report (TRI) prepared by PO Delvalle documented § 87(2)(b) use of a foot strike and head-butt and it also documented PO Delvalle's use of a hand strike for "self-defense," defense of other MOS, and overcome resistance and aggression (Board Review 14). The Investigating Supervisor Assessment Report did not contain any details of the incident (Board Review 15).

PO Rispoli provided consistent accounts in his CCRB testimony and Criminal Court Complaint regarding § 87(2)(b) actions as PO Delvalle attempted to search her (Board Review 17). The Criminal Court Complaint also included the details of what occurred at 3506 White Plains Road regarding § 87(2)(b) damaging the store's property and throwing items at the store clerk.

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or otherwise protect life, or when it is reasonable to place person in custody or prevent escape from custody (Board Review 21). Officers should use de-escalation techniques when appropriate and consistent with personal safety. In situations in which it is not safe or appropriate to use de-escalation techniques to gain voluntary compliance from a subject, officers should use only a reasonably necessary amount of force to gain control or custody of the subject.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

**Allegation (E) Discourtesy: Police Officer Francine Delvalle spoke discourteously to § 87(2)(b)**

It is undisputed that PO Delvalle said, “Fuck out of here,” twice as § 87(2)(b) was escorted out of the building by other officers.

§ 87(2)(b) stated that after she was punched PO Delvalle said, “Fuck out of here that’s a reflex,” or “That’s why I reflexed when I punched you in your fucking face,” but she did not recall what PO Delvalle specifically said (Board Review 01). Additionally, as § 87(2)(b) was being escorted out of the building, she heard PO Delvalle say, “This bitch,” or “Fuck out of here,” but again she did not recall what PO Delvalle specifically said.



2018-08-09\_12-28-03.mp4

The a Snagit clip from PO McDonald’s BWC captures a female’s voice in the background saying, “Fuck out of here” at 00:09 seconds and the same female’s voice saying, “Fuck out of here, bro” at 00:18 seconds (Board Review 06, 25, and 29).



2018-08-09\_12-32-21.mp4

The a Snagit clip from PO Scott's BWC captures a female’s voice in the background saying, “Fuck out of here” at 00:10 seconds, and the same female’s voice saying, “Fuck out of here, bro” at 00:17 seconds (Board Review 07, 24, and 30).



201800605\_20180808\_1929\_DM.mp4

The 17-second long Snagit clip from PO Rispoli’s BWC captures him and other officers escorting § 87(2)(b) out of the lobby and then out of the building (Board Review 05, 23, and 28). The Snagit clip did not depict any of the above profanities.

During his CCRB interview, PO Rispoli did not recall PO Delvalle using any profanities (Board Review 04). In her CCRB statement, PO Delvalle denied using any additional profanities or making any statements towards § 87(2)(b) aside from giving her the verbal warning to not kick her again (Board Review 02).

Patrol Guide Procedure 203-09 states that officers must be courteous and respectful in the interactions with the public (Board Review 18). The use of profanity during stressful encounters does not constitute misconduct, Disciplinary Case No. 2013-10143 (Board Review 20).

§ 87(2)(g) [Redacted]

§ 87(2)(g) [Redacted]

§ 87(2)(g) [Redacted]

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) [Redacted] has been a party (Board Review).
- PO Delvalle has been a member of services for four years and has been a subject in one CCRB complaint and two allegations, none of which were substantiated. § 87(2)(g) [Redacted]

**Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- As of April 13, 2018, the New York City Office of the Comptroller has no record of a notice of Claim being filed in regards to this complaint (Board Review 08).
- According to the Office of Court Administration, § 87(2)(b) [Redacted] has no history of convictions in New York City. Bronx Legal Aid affirmed that § 87(2)(b) [Redacted] was not convicted in regards to her arrest during this incident.

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_

Signature	Print Title & Name	Date
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Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date